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August 7, 2002

U.S. Department of Commerce  
Patent and Trademark Office  
Assistant Commissioner of Patents  
Stanley Witkowski, Primary Examiner  
Group Art Unit 2837  
Washington, DC 20231

RECEIVED

AUG 14 2002

OFFICE OF PETITIONS

#16

Reference: Petition for Revival of Patent Application 09/655792 by Bernard H. Browne, Jr.

To: Assistant Commissioner of Patents

## 1. SUMMARY

We hereby petition for the revival of Patent Application 09/655792 by Bernard H. Browne, Jr. in compliance with 37 CFR 1.137. While it is strongly felt that our short delay in responding to the Patent Office's last action was truly unavoidable, we are submitting both variations of the petition (unavoidable and unintentional) in order to expedite the finalization of our patent which was initially submitted to the Patent Office on August 31, 2000.

## 2. PETITION APPLICABLE TO 37 CFR 1.137 (a) - **UNAVOIDABLE DELAY**

### 2.1 Reply Required to The Outstanding Office Action per 37 CFR 1.137 (a) (1):

Attachment 1 lists all of the actions of the inventor with the Patent Office. The last required action on the part of the inventor was mailed 5/03/02 (Action 9 - 209 pages).

### 2.2 Petition Fee Per 37 CFR 1.137 (a) (2):

08/14/2002 HDEHESS1 00000014 09655792

01 FC:241  
02 FC:215

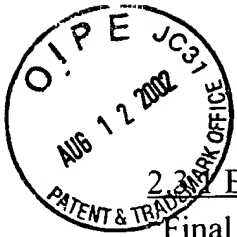
640.00 DP  
55.00 DP

Enclosed is the inventors check number 2236 for a \$55.00 petition fee in compliance with 37 CFR 1.17(1).

### 2.3 Showing That Delay Was Unavoidable Per 37 CFR 1.137 (a) (3):

There were several aspects of our last actions (Actions 6 & 9) which led to the particular timing that unavoidably occurred:

- 1) Both Final and Post Final Actions (Actions 6 & 9) actually were mailed on time.
- 2) Additional Advisory Action (Post Final Action) Mailed after Final Action
- 3) Amended Application Mailed Before New Patent Rules Initiated in August 2001
- 4) Request from Patent Office for Late Fee on 2/08/02
- 5) Extraordinary Mailing Delays Shortened Response Times



2.3.1 Both Final and Post Final Actions (Actions 6 & 9) Mailed on Time: The Patent Office "Final Action" was mailed on 10/04/01 (Action Item 5) with a requested response time of 3 months. The Inventor properly responded to this required action by mailing the requested material on 12/24/01 (Action Item 6). A item construed as a "Post Final Action" item associated with changes in the patent rules which occurred in the prior few months was mailed from the Patent Office on 2/13/02 with a 3 month response period from the "Final Action." Since this item was mailed more than 4 months after the first "Final Action" time had expired, this was logically considered to be a "Post Final Action" item with a 3 month response time from the date of its mailing. This brought it's due date to 5/13/02 which was achieved by our mailing item number 9 on 5/03/02.

2.3.2 Additional Advisory Action Mailed After Final Action: The Patent Office mailed an additional advisory action on 2/13/02, after the due date of the "Final Action" stating that our amendment filed on 01/15/02 (mailed 12/24/01) did not comply with 37 CFR 1.121. The period for reply was as shown below:

<input checked="checked" type="checkbox"/> The period for reply expires <u>3</u> months from the date of the final action.	<input type="checkbox"/> PERIOD FOR REPLY (check only a or b)
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Since this was received over a month beyond the final action date of 01/04/02, it was logically reasoned that this advisory action set a new final date of 5/13/02 which corresponded to the stated 3 month period for reply. Our response was on 5/03/02 which was within the 3 months identified in the response period identified above.

2.3.3 Amended Application Mailed Before New Patent Rules Initiated in August 2001: The Patent Office advisory action mailed 2/13/02 claimed that our amendment mailed on 5/23/01 did not comply with the new patent rule 37 CFR 1.121. However, our amendment was mailed 3 months before the new patent rules became effective in August 2001. Therefore the additional 3 months were actually needed to comply with the new Patent Rules rather than the rules which were in effect when both the original application and amendment were filed.

2.3.4 Request from Patent Office for Late Fee on 2/08/02: Trina from the Patent Office called the Inventor on 2/08/02 and requested a \$55.00 time extension fee. Details were not explained to the inventor over the phone nor in any written material, but when action 8 was received a week or so later, it was logically felt that this fee was needed for the additional 3 month response time stated in the 2/13/02 action item.

2.3.5 Extraordinary Mailing Delays: Actions times requested of this inventor by the Patent Office were typically 3 months from their mailing dates. However, response times were



shortened over previous years of such mailings due to extraordinary delays during this period caused by 9/11/01 attacks on the World Trade Center and Pentagon, anthrax contamination in mail stations and Christmas mailing loads.

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### 3. PETITION APPLICABLE TO 37 CFR 1.137 (b) - *UNINTENSIONAL DELAY*

As material in paragraph 2.3 stated, it is strongly felt that the contented delay in sending in our last required action to the Patent Office was *unavoidable*. However, if some for reason the Patent Office still feels that our response timing was *unintentional* rather than *unavoidable*, then we unfortunately request that the Patent Office substitute this section of the petition in place of the foregoing version of the petition.

#### 3.1 Reply Required to The Outstanding Office Action per 37 CFR 1.137 (b) (1):

Attachment 1 lists all of the actions of the inventor with the Patent Office. The last required action on the part of the inventor was mailed 5/03/02 (Action 9 - 209 pages).

#### 3.2 Petition Fee Per 37 CFR 1.137 (b) (2):

Enclosed is the inventors check number 2237 for a \$640.00 petition fee in compliance with 37 CFR 1.17(m). If the Patent Office accepts our evidence and arguments that the delay was unavoidable, we anticipate that this check will be either returned or destroyed.

#### 3.3 Statement That Delay Was *Unintensional* Per 37 CFR 1.137 (b) (3):

We hereby claim that the reply to the Patent Office's final action request was certainly *unintensional* and actually unavoidable as proven in section 2 of this correspondence.

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Thank you, and please inform us when we may actually claim that this patent is "pending" or "granted."

Sincerely,

Bernard H. Browne, Jr.- Inventor  
Author/Publisher of *America Online and Best Web Sites* book series  
Byte Masters International

Attachment 1: Table summarizing all communications with Patent Office.



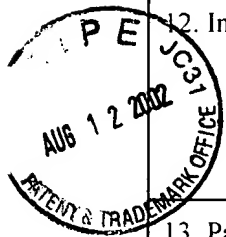
## Attachment 1

### SUMMARY OF COMMUNICATIONS ON APPLICATION 09/655792

*"INSTANT MUSICIAN, RECORDING ARTIST AND COMPOSER"*

by Bernard H. Browne, Jr.

Action	Action Date	Action Description
1. Inventor	8/31/00	Initial patent application
2. Patent Office	1/24/01	3 month reply requested for more specification detail, modification of claim(s) and comments on possible similar material in the patents of Sitrick, Aoki, et al.
3. Inventor	4/16/01	30 day extension requested along with required \$55.00 check.
4. Inventor	5/23/01	Amended application provided as requested in action item 2 including more detailed specification (7 pages increased to 29 pages), more drawings (11 drawings increased to 28 drawings), more detailed claims (1 multi part claim increased to 17 comprehensive claims) and well documented reasons why our patent application was different from the material in the patents of Sitrick, Aoki, et al.
<b>August 2001 - New Patent Rules Become Effective</b>		
5. Patent Office	10/04/01	"Final Action" with 3 month reply requested relating to what appeared to be new material in the specification, claims, drawings; and reasons why our application didn't infringe upon patents of Sato, Farrand, Goede, Miyano and Eller.
6. Inventor	12/24/01	Material provided as requested including: proof that new functional material was not added in the amendment, corrections to claims and reasons why our application didn't infringe upon the inventors' material referenced above.
6a. Patent Office	2/08/02	Trina at Patent Office called inventor on phone and requested a late fee of \$55.00. It was not explained exactly what the fee covered.
7. Inventor	2/08/02	Inventor FAXed Trina at the Patent Office authorizing a \$55.00 charge to inventor's American Express account for the time extension.
8. Patent Office	2/13/02	Advisory action stating that the amendment filed on 01/15/02 did not comply with Rule 37 CFR 1.121. It was documented that "The period for reply expires 3 months from the mailing date of the final rejection." But, since that 3 month period had already past, it was logically felt that the end of the 3 month period was 3 months from the mailing date of this new final action (Post Final Action) which extended the response time to 5/13/02.
9. Inventor	5/03/02	209 pages of patent material mailed complying with 37 CFR 1.121 within the 3 months (11 weeks and 2 days) of action 8 including marked up original material to show amendments and clean versions of the amended abstract, specification, claims and drawings both with the original figure numbers and with new figure numbers.
11*. Patent Office	5/23/02	Notice of abandonment stating that paper filed 5/03/02 was not filed on time, but rather should have been filed by 4/03/02.



12. Inventor	5/29/02	Letter to Assistant Commissioner of Patents explaining that the Inventor felt that the reply to the Patent Office's 2/13/02 request was due 5/13/02 because: 1) the Patent Office requested a 3 month response from the Final Action which had already expired on 1/04/02, and 2) the Patent Office requested a \$55.00 late fee on 2/08/02.
13. Patent Office	6/21/02	Statement that the advisory action mailed 2/13/02 did not set a new three month shortened statutory period for a reply.
14. Inventor	6/25/02	Inventor's request for advice on what action was required to complete the patent action and more detail provided on the timing of the Inventor's actions.
15. Patent Office	7/25/02	Notice that the Applicant is required to file a petition under 37 CFR 1.137 for revival of the application.
16. Inventor	8/07/02	Applicant files a petition under 37 CFR 1.137 for revival of the application.

\*Action 10 is not listed because the inventor has no record of a paper 10 action and is using numbering consistent with the Patent Office numbering where it has been identified.